IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 317 OF 2005

Mrs.Beena M. Kharatkar .. Petitioner

versus

Mrs.Sunita Wagh & ors. .. Respondents

...

Ms.Ushajee Peri i/b Mihir Desai for the petitioner.

Mr.M.H. Solkar, AGP for the respondents.

CORAM : D.G. KARNIK, J

DATED : 19th August 2006

P.C.:

1. This Contempt Petition is filed by the petitioner alleging that the respondent nos.1 and 2 have committed breach of the order of the School Tribunal dated 19th April 2004 and the order of this Court dated 9th December 2004 and thereby they have committed

contempt of the court.

2. The petitioner challenged the termination of service by the respondent nos.1 and 2 before the School Tribunal. By the order dated 19th April 2004, the School Tribunal directed the respondent nos.1 and 2 to reinstate the petitioner in service with full backwages. That order was challenged before this court by the respondent nos.1 and 2 by filing Writ Petition no.6161 of 2004. By order dated 9th December 2004, this Court issued Rule in the Writ Petition. As regards the interim relief, this Court directed stay of the order of the School Tribunal subject to the condition of respondents depositing in this court the entire amount of backwages within 12 weeks.

3. According to the petitioner, the respondent nos.1 and 2 neither deposited the entire amount of backwages nor reinstated the petitioner in service. Since the stay granted by this court was conditional, the respondent nos.1 and 2 have committed breach of the order of the School Tribunal and of this court by not depositing the entire arrears and by not reinstating the petitioner.

4. Learned counsel for the respondent nos.1 and 2 submits that the amount of Rs.3,21,350/- amounting to the entire backwages has been deposited in this court. Copy of the cheque drawn in favour of the Registrar (General) High Court Bombay is annexed to the affidavit in reply. Learned counsel for the petitioner however submits that the calculations made by the respondent nos.1 and 2 are erroneous and the amount deposited by the petitioner falls short by Rs.33,000/- as per the correct calculations.

5. In my view, it is not necessary to go into the controversy as to whether the amount of Rs.3,21,350/- deposited by the respondent nos.1 and 2 is the full amount of the arrears or whether it falls short by Rs.33,000/- as alleged by the petitioner. In Mohammad Salam Anamul Haque Vs. S.A. Azmi & Ors, reported in 2001 (Supp.2) Bom.C.R. 37, this court has held that if the alternative remedy is available, the court may not entertain the contempt petition. The petitioner has alternative remedy for execution of the order of the School Tribunal under section 13 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act 1977. The petitioner can avail of the said remedy, if the amount deposited by the respondents

falls short of the amount of the backwages.

6. In any event, in my view there is no deliberate breach of the order of this court. The respondents have made their calculations and deposited what are the backwages according to them. The balance amount claimed of Rs.33,000/- is not proved to be due. In the circumstances, it would not be appropriate to exercise the contempt jurisdiction. The petitioner is relegated to the remedy of execution of the order, if her calculations are correct. Accordingly, contempt petition is dismissed.

(D.G. KARNIK, J)